



Linda S. Adams
Secretary for
Environmental
Protection

California Environmental Protection Agency

Air Resources Board • Department of Pesticide Regulation • Department of Toxic Substances Control
Integrated Waste Management Board • Office of Environmental Health Hazard Assessment
State Water Resources Control Board • Regional Water Quality Control Boards



Arnold Schwarzenegger
Governor

Certified Mail: 7003 1680 0000 6174 8821

June 16, 2006

Ms. Jill Yaeger, Director
Madera County Department of Environmental Health
2037 W. Cleveland Avenue
Madera, California 93637

Dear Director Yaeger:

The California Environmental Protection Agency (Cal/EPA), Office of Emergency Services, Office of the State Fire Marshal, Department of Toxic Substances Control, and the State Water Resources Control Board conducted a program evaluation of Madera County Environmental Health's Certified Unified Program Agency (CUPA) on June 6th and 7th, 2006. The evaluation was comprised of an in-office program review and field inspections. The State evaluators completed a Certified Unified Program Agency Evaluation Summary of Findings with your agency's program management staff, which includes identified deficiencies, preliminary corrective actions, and timeframes. Two additional evaluation documents are the Program Observations and Recommendations and the Examples of Outstanding Program Implementation.

I have reviewed the enclosed Summary of Findings and I find that Madera County Environmental Health's program performance is unsatisfactory with improvement needed. To complete the evaluation process, please provide quarterly reports to Cal/EPA of your progress toward correcting the identified deficiencies. Submit your quarterly reports to Kareem Taylor (kareemt@calepa.ca.gov) by the 15th of the month following each quarter. The first report of progress is due on September 15, 2006.

Cal/EPA also noted during this evaluation that Madera County Environmental Health has worked to bring about a number of local program innovations. These include providing regulated businesses convenient online access to CUPA forms and having a bilingual inspector available to assist owners/operators that speak Spanish. We will be sharing these innovations with the larger CUPA community through the Cal/EPA Unified Program web site to help foster a sharing of such ideas statewide.

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Thank you for your continued commitment to the protection of public health and the environment through the implementation of your local Unified Program. If you have any questions or need further assistance, you may contact your evaluation team leader or Jim Bohon, Manager, Cal/EPA Unified Program at (916) 327-5097 or by email at jbohon@calepa.ca.gov.

Sincerely,



Don Johnson
Assistant Secretary
California Environmental Protection Agency

Enclosure

cc: Ms. Ann Rolan, CUPA Manager (Sent Via Email)
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CERTIFIED UNIFIED PROGRAM AGENCY EVALUATION SUMMARY OF FINDINGS

CUPA: Madera County Environmental Health

Evaluation Date: June 6 and 7, 2006

EVALUATION TEAM

Cal/EPA: Kareem Taylor

SWRCB: Terry Snyder

OES: Jack Harrah

DTSC: Tom Asoo

OSFM: Francis Mateo

This Summary of Findings includes the deficiencies identified during the evaluation, observations and recommendations for program improvement, and examples of outstanding program implementation activities. The evaluation findings are preliminary and subject to change upon review by state agency and CUPA management. Questions or comments can be directed to Kareem Taylor at (916) 327-9557.

	<u>Deficiency</u>	<u>Preliminary Corrective Action</u>
1	<p>The CUPA is not inspecting all HMRRP facilities once every three year as required by law.</p> <ul style="list-style-type: none"> In FY 02/03, the CUPA performed 33 routine inspections out of 229 HMRRP facilities. The CUPA's inspection rate for FY 02/03 is 14%. In FY 03/04, the CUPA performed 80 routine inspections out of 359 HMRRP facilities. The CUPA's inspection rate for FY 03/04 is 22%. In FY 04/05, the CUPA performed 22 routine inspections out of 378 HMRRP facilities. The CUPA's inspection rate for FY 04/05 is 6%. <p>Title 6.95, Article 1, 25508 (b)</p>	<p>Immediately, the CUPA will develop and implement a plan to inspect all HMRRP facilities once every three years.</p> <p>By September 30, 2007, perform routine inspections on a third of all HMRRP facilities in Madera County for FY 06/07. Continue this process into the proceeding fiscal years taking care to perform a routine inspection on each facility once every three years.</p>
2	<p>The CUPA has not inspected any CalARP facilities once every three years as required by law.</p> <p>For FYs 02/03, 03/04, and 04/05, the CUPA's inspection summary report 3 shows "0" routine</p>	<p>Immediately, the CUPA will train adequate staff personnel to implement the CalARP Program.</p> <p>By September 30, 2007, perform</p>

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	<p>inspections performed.</p> <p>CUPA plans to implement the CalARP Program once the new staff person is sufficiently trained in other elements of the Unified Program.</p> <p>Title 19, Division 2, Chapter 4.5, Section 2775.3. H&SC, Chapter 6.95, § 25537(a)</p>	<p>routine inspections on a third of all CalARP facilities in Madera County for FY 06/07. Continue this process into the proceeding fiscal years taking care to perform a routine inspection on each facility once every three years.</p>
3	<p>The CUPA is not inspecting all Hazardous Waste Generator with a frequency consistent Madera County's Inspection and Enforcement Plan.</p> <ul style="list-style-type: none"> In FY 02/03, the CUPA performed 8 routine inspections out of 140 Hazardous Waste Generator facilities. The CUPA's inspection rate for FY 02/03 is 6%. In FY 03/04, the CUPA performed 29 routine inspections out of 149 Hazardous Waste Generator facilities. The CUPA's inspection rate for FY 03/04 is 19%. In FY 04/05, the CUPA performed 1 routine inspections out of 159 Hazardous Waste Generator facilities. The CUPA's inspection rate for FY 04/05 is .006%. <p>Title 27, CCR, sections 15200(b)(1) and 15200(f)(1)(C)</p>	<p>Immediately, the CUPA will develop and implement a plan to inspect all Hazardous Waste Generator facilities once every three years.</p> <p>By September 30, 2007, perform routine inspections on a fifth of all Hazardous Waste Generator facilities in Madera County for FY 06/07. Continue this process into the proceeding fiscal years taking care to perform a routine inspection on each facility with a frequency consistent Madera County's Inspection and Enforcement Plan.</p>
4	<p>The CUPA's Consolidated Permit Program does not contain a list of all the types of permits and authorizations that will be consolidated within the Unified Program.</p> <p>Title 27, CCR, section 15200 (c)(1)</p>	<p>By September 7, 2006, update the Consolidated Permit Program to include a list of all types of permits and authorizations that will be consolidated within the Unified Program.</p>
5	<p>The CUPA is not reporting formal enforcement on the Annual Enforcement Summary Report 4. The CUPA has taken formal enforcement at the Quick Serve and West Gate Market facilities by issuing Red Tags for UST noncompliance.</p> <ul style="list-style-type: none"> In FY 02/03, Summary Report 4 showed that in the UST program element, Madera County collected \$1680 in fines and penalties, but had no administrative, civil, or criminal enforcement actions reported. 	<p>By September 30, 2007, report formal enforcement (administrative, civil, and criminal) and penalties assessed and collected in the Annual Summary Report 4.</p>

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	<ul style="list-style-type: none"> In FY 03/04, Summary Report 4 showed that in the UST program element, Madera County collected \$1680 in fines and penalties, but had no administrative, civil, or criminal enforcement actions reported. In FY 04/05, Summary Report 4 showed that in the Hazardous Waste Generator program element, Madera County collected \$1500 in fines and penalties, but had no administrative, civil, or criminal enforcement actions reported. <p>Title 27, CCR, section 15290 (a)(3)</p>	
6	<p>The CUPA is not implementing and enforcing the requirements of the Business Plan Program for all businesses subject to the requirements of Chapter 6.95, Article 1. Specifically, agricultural handlers have neither been regulated, nor properly exempted from the requirements of the Business Plan program.</p> <p>H&SC, Chapter 6.95, § 25503.5(a)(1)</p>	<p>By September 7, 2006, submit a plan of action outlining how the CUPA will either require a Business Plan from agricultural handlers, or exempt these businesses from the requirements of the program. Include a proposed time-line for this plan.</p>
7	<p>The CUPA is not fully implementing the CalARP Program. RMPs have not been obtained from all participants in the federal RMP program. The CUPA has not fully identified all potential California-only stationary sources, and has done no preliminary risk determinations.</p> <p>Title 19, CCR, Division 2, Chapter 4.5, § 2780.2</p>	<p>By September 7, 2006, submit a plan of action outlining how the CUPA proposes to fully implement the CalARP Program. Include a proposed time-line for this plan.</p>
8	<p>The CUPA has not met the mandated inspection frequency for UST facility compliance inspections the last three fiscal years. In 2005, the CUPA completed UST compliance inspections for only 60% of the regulated UST facilities. The CUPA's goal is to meet the inspection frequencies and conduct the compliance inspection during the annual monitoring certification. The CUPA previously had only one certified UST inspector and that staff person was assigned to UST responsibilities less than full time including emergency response among other duties. The CUPA has assigned individual UST facilities Annual Monitoring Certification due dates to a</p>	<p>Immediately, the CUPA will develop and implement a plan to inspect all UST facilities annually.</p> <p>By July 30, 2007, perform routine inspections on all UST facilities in Madera County for FY 06/07. Completion of UST inspections should be reflected in the CUPA's Annual Summary Report 3 and Quarterly Report 6.</p>

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	<p>specific quarter during the year in order to distribute the frequency of inspection more evenly across the year. The CUPA stated that they are using a risk-based evaluation process to first inspect the facilities with the highest potential for environmental impacts or are recalcitrant in returning to compliance after Notice of Violation. This provides maximum protection for the environment yet may reduce compliance frequencies. In addition, the CUPA has hired 1 new inspector and this inspector is now certified so the inspection percentage should be increasing.</p> <p>Chapter 6.7 HSC Section 25288 (a)</p>	
9	<p>The CUPA has not amended their Inspection and Enforcement Plan to include a discussion of how the CUPA will expend 5% of their hazardous waste related resources to the oversight of Universal Waste handlers and silver-only generators.</p> <p>Title 27, CCR, section 15200 HSC 25201.4(c) CUPA forum board position</p>	<p>By September 7, 2006, the CUPA will update their Inspection and Enforcement Plan to address how they will expend resources to implement oversight of Universal Waste handlers and silver-only generators.</p>
10	<p>The CUPA did not conduct a complete oversight inspection. During the inspection it was identified that the generator is a Large Quantity Generator with different standards than a Small Quantity Generator. The CUPA inspector did not add violations relating to Large Quantity Generator standards, such as, lack of tank integrity and secondary containment assessment, incomplete Contingency Plan requirements, and inadequate training documentation.</p> <p>Title 27, CCR, section 15200(b)</p>	<p>By December 7, 2006, the CUPA shall ensure that staff is adequately trained to conduct inspections at Large Quantity Generators. The CUPA shall focus training to help staff become proficient in enforcing hazardous waste standards such as Large Quantity Generator Standards, identifying onsite treatment, and onsite recycling. DTSC strongly recommends California Compliance School training. Their hazardous waste training module is a good foundation course for hazardous waste generator, tiered permitting, and recycling standards.</p>
11	<p>The CUPA is not citing violations in a manner consistent with the definitions of minor, Class II or Class I as provided in law and regulation. During the CUPA evaluation, recalcitrant minor violations should have been elevated to a Class II violation.</p>	<p>By July 7, 2006, the CUPA shall ensure that staff is trained and familiar with the statutory and regulatory definitions for the different hazardous waste violation classifications.</p>

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	<p>Title 27, CCR, section 15200(f)(2)(C) HSC, sections 25110.8.5 and 25117.6 Title 22, CCR, section 66260.10</p>	
12	<p>The CUPA is unable to document that all facilities that have received a notice to comply citing minor violations have returned to compliance within 30 days of notification. During the file review, it was observed that some minor violations did not have a record of return to compliance. The business shall either submit a Return to Compliance Certification in order to document its compliance or in the absence of certification the CUPA shall re-inspect the business to confirm that compliance has been achieved.</p> <p>Title 27, CCR, section 15200(f)(2)(C) HSC, section 25187.8(g)(1)</p>	<p>By July 7, 2006, the CUPA shall ensure that facilities who are cited for minor violations during hazardous waste inspections have either submitted a Return to Compliance letter or the CUPA has re-inspected the facility within the required corrective action date.</p>
13	<p>The CUPA does not forward the Business Plan data collected within 15 days of receipt and confirmation to the fire departments.</p> <p>HSC, Section 25509.2 (a)(3)</p>	<p>By September 7, 2006, the CUPA shall forward the information within 15 days of receipt to the respective fire agencies.</p>
14	<p>There is no indication that the CUPA reviews for changes in the inventory statements or receives any amendment to the inventory form within 30 days of the following information:</p> <ul style="list-style-type: none"> (1) A 100 percent or more increase in the quantity of a previously disclosed material. (2) Any handling of a previously undisclosed hazardous material subject to the inventory requirements of this chapter. (3) Change of business address. (4) Change of business ownership. (5) Change of business name. <p>HSC, Section 25510</p>	<p>During the inspection, insure that all Business Plan information is correct and up-to-date. Due date: September 7, 2006.</p>

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CUPA Representative

Jill Yaeger
(Print Name)

Jill Yaeger
(Signature)

Evaluation Team Leader

Hareem Taylor
(Print Name)

Hareem Taylor
(Signature)

PROGRAM OBSERVATIONS AND RECOMMENDATIONS

1. **Observation:** The CUPA's Policies and Procedures Manual contains an organization chart of CUPA staff, however, the chart has not been updated with the correct personnel.

Recommendation: Update the organization chart with the current CUPA staff.

2. **Observation:** In the facility inspection reports reviewed, some did not contain a signed consent to inspect by the facility owner/operator. Signed consent on the inspection report is important because it strengthens any potential enforcement case against a noncompliant facility.

Recommendation: Document consent granted for all facility inspections by having the owner/operator sign the consent portion of the inspection report.

3. **Observation:** The CUPA reviews business license applications to determine if a business may need to be regulated under any of the elements in the Unified Program. While this approach may catch some businesses that should be regulated by the CUPA, errors in interpretation could cause the CUPA miss some businesses that should be regulated in one or more of the UP elements.

Recommendation: One day a month, have each CUPA inspector search Madera County for businesses that are currently not regulated by Madera County Environmental Health CUPA, but may be required to by law based on their business activities. Contact owners/operators of these businesses to gather the pertinent information needed to determine whether they need to be regulated by the CUPA.

4. **Observation:** The CUPA's area plan is currently undergoing revision. If the plan is not finalized before the SB-391 mandated changes to the Title 19 area plan regulations [Title 19, Division 2, Chapter 4, Article 3, §§ 2720-2728] take effect, the area plan will be subject to these revised regulations, which mandate the inclusion of pesticide drift protocols with the next revision.

Recommendation: None offered.

5. **Observation:** The CUPA's new area plan should include a reporting form, as required by § 2720(c), an optional example of which is included in the regulations.

Recommendation: None offered.

6. **Observation:** The CUPA's last three self-audits included the CalARP elements for Title 27, however, the self audits did not include all of the required CalARP elements for Title 19.

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Recommendation: Include all of the information required for the Title 19 annual performance audit with the annual Title 27 self-audit. These data elements are found in Title 19, Division 2, Chapter 4.5, § 2780.5(b). Include this data with the “CalARP” section of the Title 27 self-audit. Include all of the elements, even when the answer is “none” or “zero”.

7. **Observation:** The CUPA’s 04/05 self-audit indicates that further HMEP grant funds are being sought. These funds may also be used for commodity flow studies, table-top exercises, and other emergency preparedness activities.

Recommendation: None offered.

8. **Observation:** The CUPA is having less success getting information on new businesses from the City of Madera than from the County of Madera, and the City of Chowchilla.

Recommendation: Recommend trying to develop a better working relationship with licensing, building and other City officials that may have access to the information needed to fully implement the Business Plan program. You might also ask the fire chief about Certificates of Occupancy.

9. **Observation:** Propane and natural gas distributors file a quarterly report, Schedule T, with the State Board of Equalization. This information can be used to determine if 50% or more of their total sales are retail. If so, these distributors are eligible for exclusion from the CalARP Program, pursuant to Title 19, § 2770.4.1.

Recommendation: None offered.

10. **Observation:** The CUPA’s UST facility files are well organized and information is easily obtained in the file folder’s labeled sections. In the five files reviewed, some of the documents were not filed chronologically and/or supporting information was placed on top of a section, which may lead to misunderstanding the order or importance of the following documentation.

Recommendation: The SWRCB strongly encourages the agency to ensure that documents are filed chronologically and that outdated material be removed from the file if it is no longer required or contains information not needed by the CUPA.

11. **Observation:** The Unified Program current Permits to Operate for the Underground Storage Tank Program reviewed did not contain the required language that the permit is subject to all applicable requirements of Chapter 6.7 of the California Health and Safety Code and Title 23, Division 3, Chapters 16 of the California Code of Regulations and does not have a statement that the operating permit, including the monitoring, response, and plot plans are to be maintained on site.

The CUPA has converted the permit issuance from manual processing to electronic processing. The terms and conditions have been drafted and put into the Policies and Procedures Manual, but were not available for the current round of permitting.[CCR Title 23 Section 2712 (h and i).

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Recommendation: The SWRCB instructs the CUPA to amend the Permit to Operate for the UST Program by December 1, 2006 to include the required terms and conditions the CUPA developed in the Policies and Procedures Manual.

- 12. Observation:** During the Annual Monitoring Certification, the UST inspector elected not to test the shear valve as shown on the Annual Monitoring Certification form which is used to document testing and servicing of monitoring equipment. The inspector stated that they only check shear valves with Dispenser Containment Floats and Chains or where leak detection equipment is attached to the shear valve as required by regulation.

Recommendation: The SWRCB encourages the agency to ensure that all shear valves are tested and operational during the annual monitoring certification. Although not required by Title 23 CCR this equipment is regulated by Fire Code and is an effective release prevention device when it is operational. Testing the shear valve only requires a minimum of time and effort by the Service Technician.

- 13. Observation:** The CUPA is under staffed and recruitment is somewhat difficult for this remote location and rural county. Also new staff tends to only stay for a short time until another position opens up in a larger metropolitan agency requiring the CUPA to retrain new staff.

Recommendation: The SWRCB strongly encourages Madera County Environmental Health to secure increased funding for additional staff for the CUPA program. The CUPA should offer creative incentives in recruiting professional staff.

- 14. Observation:** The CUPA's written procedures for complaint follow up of DTSC referrals are not always being followed. Some complaints were not logged into the data base program for tracking the status and outcome.

Recommendation: The CUPA should ensure that all complaints are consistently managed per the procedures to ensure that all complaints are being addressed and tracked.

- 15. Observation:** The CUPA staff has access to a camera; however, during the file review, it was evident that photographs were not taken during inspections.

Recommendation: Photographs are useful to document violations and the conditions at facilities at the time of the inspection. Photographs could help strengthen your case should enforcement become necessary. Always remember to date stamp photographs.

- 16. Observation:** When violations and corrective measures are identified in the Notice to Comply/Summary of Violations, there are times when additional details could be provided.

Recommendation: The CUPA should be descriptive when detailing violations and corrective measures (e.g. the number, size, and location of containers/tanks in violation).

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Having a clear understanding of the violation and corrective measure not only helps the facility in returning to compliance, but also serves to strengthen your case should formal enforcement actions need to be taken.

- 17. Observation:** The CUPA has developed a user-friendly checklist document for Small Quantity Generators that gives the citation and the corrective action for violations, a place to note consent, ability to note the class of violation, and the ability for the generator to use the form as a Return to Compliance documentation. The designated area for noting comments and observations is very limited in space.

Recommendation: An additional observation page should be included and utilized to expand on violation descriptions (see recommendation in number 3 above) and other general observations such as waste streams and quantities generated and a map identifying where hazardous waste is being accumulated.

- 18. Observation:** The CUPA is not coordinating with fire agencies regarding the requirements of the business plan program because of staffing issues.

Recommendation: The CUPA should hire a person to work on business plans and develop mechanisms for coordinating and regularly meet with fire agencies to emphasize the importance of business plans in their emergency response plans. Additionally, to identify businesses who do not comply with the requirements and bring them to compliance.

- 19. Observation:** Most of the inventory statements in the files did not indicate Fire Code Hazard Classes of hazardous materials in business plans.

Recommendation: The CUPA should coordinate with fire departments to determine whether fire chiefs require or need this information for their emergency response plans.

- 20. Observations:** The Business Plan documentation or information to be sent to the fire agencies were placed or stacked in an "out" basket with no indication that the CUPA is sending these in a timely manner.

Recommendations: The CUPA should establish a mechanism to confirm that they sent each business plan to the fire agencies within 15 days after each business submits the required plans and inventory statements or updated information.

- 21. Observation:** The CUPA does not meet with fire agencies on a regular basis to coordinate or resolve issues involving the Unified Program.

Recommendation: The CUPA should participate in fire agency chiefs' meetings or establish a mechanism to schedule regular meetings with the fire chiefs in the county.

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EXAMPLES OF OUTSTANDING PROGRAM IMPLEMENTATION

1. The Program Manager is also perform non-CUPA responsibilities such as the Childhood Lead Poisoning Prevention Program and site cleanup projects for UST, hazardous materials and solid waste programs.
2. In October 2004, the CUPA hosted two Designated Operator workshops for UST owner/operators to provide the required forms emphasized the importance of complying with new regulations and requirements. The CUPA offered Designated Operator (DO) workshops before the law requiring DOs came into effect on January 1, 2005. At the workshops, translators were provided who could speak in Arabic and Punjabi.
3. Madera County has a bilingual inspector available to assist owners and operators who are Spanish speaking.
4. In January 2005, the CUPA sent informational flyers regarding Mercury Waste Management workshops to 90 businesses in Madera County.
5. Programs that are currently being performed by CUPA staff in addition to their UP responsibilities include: Liquid Waste, Solid Waste, and business license review. Each CUPA inspector performs work in these programs at least two days a week.
6. The CUPA program manager is a certified lead based paint Inspector/Assessor, and is the lead environmental investigator for the Childhood Lead Poisoning Prevention Program.
7. Currently, the CUPA is responsible for preparation of claims to the UST Cleanup Fund so that Madera County can be reimbursed for funding the cleanup of the North Fork Sawmill.
8. The CUPA's certification form is well written and laid out, and is used for both annual inventory certification, and for certification that the entire business plan has been reviewed and is correct.
9. The CUPA's boilerplate emergency response plan form includes identification of systems or parts of the facility that are vulnerable to seismic damage, and provision for the immediate inspection of such areas.
10. The CUPA's forms are available on-line, making it much more convenient for the regulated businesses.
11. Although the CUPA is way behind on inspections, the concept of risk-based priority for inspection is a good one, provided statutory intervals are met.
12. The CUPA's proposal to make inventory information and maps available to first responders via wireless Internet is an excellent one. This would reduce a lot of

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paperwork on both ends, and ensure that vital information is not locked in the trunk of the car of someone who's on vacation.

13. CUPA personnel are highly knowledgeable in the requirements of the Business Plan and CalARP Program elements.
14. The CUPA inspector was knowledgeable and conducted a thorough inspection and had good rapport with the UST owner/operator and the service technician. The attention to detail resulted in the replacement of one of the mechanical leak line detectors and explaining the need for employee training by July 1 each year in conjunction with the owner's contracting of a new Designated Operator during 2006.